IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 969 OF 2006

Narendra Kumar Dabar,
of Mumbai Indian inhabitant residing
at R-13/14C, New Navy Nagar,
Colaba, Mumbai 400 005. ... Petitioner

Vs.

1. Union of India,
Aaykar Bhavan, New Marine Lines,
Mumbai 400 026.

2. Director General of Coast
Guard having his office at
National Stadium Complex,
New Delhi 110 001.

3. Commandant,Bureau of Naviks,
having his office at Cheetah Camp,
Mankhurd,
Mumbai 400 088. ... Respondents

Mr. Shyam Mehta with Mr.Satendrakumar for Petitioner.

Mr. Y.R. Mishra for Respondents.

CORAM: F.I. REBELLO &
MRS.V.K.TAHILRAMANI,JJ.
DATE : 19TH JUNE, 2006

ORAL JUDGMENT (Per F.I. Rebello,J.):

1. The Petitioner joined the Indian Coast Guard as Navik on 03.01.1986. The Petitioner successfully qualified for the Air Crew Diver course conducted by the Indian Navy and accordingly on 12.6.1992 Petitioner was appointed as an Air Crew Driver. The Petitioner by order dated 6.1.2006 has been informed that he has been reverted from A.C.M. (D) cadre to the parent cadre and is not entitled to draw flying

pay and other allowances/benefits of A.C.M.(D) cadre with effect from 15th January, 2006. Along with the Petitioner there are also some others. Earlier also a similar order had been passed where upon one of the A.C.D.s filed a petition before the High Court of Calcutta challenging his removal. That was disposed of with a direction to decide the representation of the Petitioner therein in accordance with law. It is also set out therein that any policy decision taken should not be given retrospective effect. After that a reasoned order came to be passed which was challenged before the High Court of Calcutta and the Court set aside the order. The said order was confirmed in appeal. Thereafter on 11.5.2005, two more A.C.D.s who were similarly reverted approached the High Court of Madras in two separate writ petitions wherein interim relief was granted. The Respondent Nos. 2 and 3 thereafter on 28.12.2005 realising that their action of removing the Petitioner and other ACDs was illegal, reinstated the Petitioner alongwith other ACDs to the post of ACD. A fresh order has thereafter came to be passed on 6.1.2006 which is the subject matter of the present petition.

2. The Government of India by order dated 29.9.1978 was pleased to sanction the terms and conditions of service of coast guard personnel. Some of the

relevant provisions are as under :

> "(a) The Coast Guard shall follow the general rules and procedure applicable to the I.N. for items shown in the Annexures to be governed by Naval rules.
>
> (b) For items other than these covered by sub para (a) above, the provisions applicable to Central Government Civil Services paid from civil estimates shall be applicable muttis mutandis."

3. The post of A.C.D. is in the Aviation branch which was created pursuant to order of 11.11.1983, including the conditions of service as set out therein. It was specifically set out that the terms and conditions would be in terms of letter dated 29.11.1978 to which we had adverted earlier. The post of A.C.D. and similar other posts are specialisations. Annexure II to the order dated 29.9.1978 provided that subordinate officers and Navika of the Coast Guard Aviation Cadre, who qualify and fulfil all conditions laid down and are employed as Air Crew on tenure basis, shall be eligible for flying pay of Rs.374. 50 p.m as applicable to sailors of Naval, Aviation Branch vide

NI-25/74 as amended form time to time. There was another departmental communication dated 9th April, 1988 in the matter of conditions of service - Air Crew Divers wherein it was set out as under :

> "In view of the above, it is clarified that the Air Crew Diver in the Coast Guard would continue to be deployed for diving duties so long as they are medically fit."

4. It is the case of the Petitioner that the Respondent are seeking to rely on the letter addressed by the Government of India, Indian Navy in respect of Air Crew Divers in the service of the Indian Navy. It is submitted that these terms and conditions are not applicable to persons in the Coast Guard as it was not open to Respondent Nos. 2 and 3 to make any rules and if any rules have been made, they have to be made by Respondent No. 1 Union of India. In the instant case, it is submitted that the Union of India has made no rules and consequently the impugned order is without jurisdiction. The letter from Respondent No. 1 to the Chief of the Naval Staff is dated 18.4.1986 whereby sanction was conveyed by the President of India to increase the normal tenure of Aircrew Diver to seven years with effect from 1st January, 1986.

5. In the reply filed on behalf of Respondent, it is set out that considering the Government of India's letter dated 18.4.1986, which is in regard to A.C.D. in the Navy, was equally applicable to A.C.D.s in the coast guard and this was the position right from the time the Aviation Cadre of the Coast Guard was created. Considering the letter of Government of India dated 29th September, 1978 and 11th November, 1983, the letter dated 18th April, 1986 is also applicable to the coast guard personnel and is part of their service terms and conditions. It is therefore, set out that the Petitioners were sent on tenure post based on the similar rules as applicable to Indian Navy. The Petitioner has also been drawing entitlements in the post of A.C.D. on the same basis as in the Indian Navy. Once the Petitioner has accepted his tennure posting and allowances on the basis of policy followed by Indian Navy in the matter of repatriation also it will be the same, in the absence of any independent policy being followed by the Coast Guard. It is therefore, submitted that the Petition ought to be dismissed.

6. The question before us really is whether the letter from Government of India to the Indian Navy dated 18.04.1986 is also applicable to A.C.D.s like Petitioner. The submission of the Petitioner is

that the rules can be framed but they have to be framed by the Government of India and not by the Coast Guard or Indian Navy. In these circumstances, the communication of 18.4.1986 cannot be made applicable to the Petitioners.

7. We have carefully considered the submissions as advanced on behalf of the Petitioners. We have earlier reproduced Clauses (a) and (b) of the letter dated 29.9.1978. From that letter, what emerges is that the conditions of service of members of the coast Guard, the coast guard was bound to follow the general rules and procedures applicable to Indian Navy in so far as Item shown in the annexure. To items other than those covered by the sub para (a) where the provisions of the Central Civil Services. The Petitioner therefore, has to establish that the aforesaid letter of 29.9.1978 does not take into consideration the entire service conditions and there are still areas uncovered in respect of which the Government of India alone has to make rules.

. On behalf of the Petitioners, the learned counsel had placed reliance on the judgement in Shankar Pandurang Jadhav and Ors. Vs. Vice Admiral, Flat Officer, Commanding-in-Chief and Ors. (1991) 2 S.C.C. 209 to contend that once the service conditions have been laid down by the Competent

Authority it was not open to the department to alter those conditions. In that case, by presidential order, merger was effected amongst various cadres. Subsequent order was issued by the western Naval command. The Apex Court observed that subsequent order issued by the Western Naval Command could not alter the Presidential Order; if that subsequent order was found to be inconsistent with the Presidential Order, it had to be ignored for the simple reason that the Officers of the Naval establishment were not competent to alter, vary or modify the conditions of service. That is not the case here.

8. In the instant case, we may note that the Petitioner was appointed as A.C.D. some time on 12.6.1992. There are similar posts in the Navy. Earlier post of A.C.D. in the Navy was tenure post of three years. It was increased form time to time and as of the date of petition, it was seven years on fulfilment of service conditions. The question which arises whether that tenure would be applicable to A.C.D.s in the coast Guard. The communication of 9.4.1988 is on internal communication which has taken a view that A.C.D. in the coast guard would continue to be deployed for diving duties so long as they are medically fit. This was not an order by an authority competent to make the rules of recruitment

or conditions of service. On 20.10.2003, an order came to be issued that those who are employed on tenure basis, would be entitled to flying pay of Rs.375.50 per month as applicable to sailors of Naval Aviation Branch. Some additional benefits, which the personnel of Indian Navy were having, were also extended to A.C.D.s.

9. We may come back to the communication of 29.9.1978. If that letter is seen in its correct perspective in respect of matters covered by the annexure as a normal rule that would govern those matters. Annexure 1 Clause IV provides for promotions. Similarly clause II provides for number of officers to be specialised in each category which includes diving. It also provides for probation, pays of scale, additional special pay and other benefits. In other words, they cover the entire gamut from appointment to promotion and retirement. The other annexure provides for terms and conditions of the service of subordinate officers. It may also pointed out from Clause (13) of Annexure II, that whenever it was thought fit to apply service benefits of naval services, to coast guard, it has been so done. This would indicate that in normal course, the provisions pertaining to naval sailor are made applicable.

10. From a bare reading of Clause (a), (b) of Para 2, of the communication dated 29.9.1978, it would be clear that if naval rules and regulations are not applicable, then the Central Civil Services Rules would be applicable. This would mean that in the matter of conditions of service, either the general rules of Indian Navy would be applicable or Central Civil Services Rules. The Petitioner was selected as A.C.D. and was drawing benefits of A.C.D. as payable in the Navy. If the contention of the Petitioner is to be accepted, then in that event in the absence of any rule made by the President, the Petitioner could not have been appointed as A.C.D. The general construction therefore, ought to be that in so far the conditions of service are concerned, it would include specialised services and conditions of service as applied to the Indian Navy would be applicable. In the instant case, there are similar posts in the Indian Navy. The term of deputation is seven years and as such that would be tenure also for A.C.D.s in the coast guard. There is nothing on record or brought to our notice otherwise, that the tenure posting of Navik is covered by some other rules. It cannot be that once a person is appointed as A.C.D., he continues there for all time. Considering the letter of appointment itself, it would show that it was tenure post.

. For all the aforesaid reasons, we are of the considered view that the tenure of the A.C.D. would be the same as made applicable to the naval services. The Petitioner therefore, has no right to contend that once he is appointed, he will continue to be deployed for diving duties so long as he is medically fit. There is no such rule. Even otherwise, any employee can always be relieved from the post on medical unfitness. A tenure post contemplates a particular period upto which a person can serve therein. In the instant case, it is seven years in terms of the contract in the Indian Navy.

11. We therefore, find no merit in the contentions as urged by the Petitioner. Rule discharged. There shall be no order as to costs.

(MRS.V.K.TAHILRAMANI,J.) **(F.I.REBELLO, J.)**